

DOROTHY S. COFIELD
ATTORNEY AT LAW

PRIVATE ROAD & PUBLIC UTILITY EASEMENT AGREEMENT

This agreement made this 22 day of September 1997, between ,
Todd and Holly Bates, husband and wife, hereinafter referred to as
"Owner A" and, Burt Bates and Todd and Holly Bates, husband and
wife, hereinafter referred to as "Owner B".

Recitals:

- A. Owner A is the fee owner of certain real property located in Tillamook County, Oregon. These properties are described as Tax Lot 3400 Tillamook County Assessor's Map No. 1S-10-32 (subject property A-1) and Tax Lot 2800 Tillamook County Assessor's Map 1S-10-32 (subject property A-2) and more particularly shown on Exhibit A attached hereto and by this referenced incorporated herein.
- B. Owner B is the fee owner of certain real property located in Tillamook County which property is described as Tax Lot 200 Assessor's Map No. 1S 10 5BA (property B) and more particularly shown on Exhibit B attached hereto and by this referenced incorporated herein.
- C. Access to Owner B's property is provided over a private road located on the subject property A-1 and A-2. The parties intend that the private road is to serve Owner B's property and future lot owners of Holly Heights Subdivision, including the future subdivision of Lot 19 of said subdivision and except for the owner(s) of Lot 20 which does not have access to the private street. Further, access to property A-2 (Tax Lot 2800 as required by Tillamook County's Land Division Ordinance) is provided over the same road.
- D. The true and actual consideration paid for this transfer stated in terms of dollars is \$ -0-. Other consideration

consists of value promised to Owner A by the ability to subdivide property B.

Now, therefore, in consideration of the foregoing recitals set forth above, the parties agree as follows:

- A. Owner A hereby grants to Owner B, including future subdivision owners of the site depicted in the approved subdivision plat, except for the owner(s) of Lot 20, which does not have access to the private street, Exhibit C, their heirs, successors, assigns and representatives a 50 foot wide non exclusive easement for vehicular access and public utility easement between State Highway 131 and Tax Lot 200 Assessor's Map No. 1S-10-5BA. This easement is more particularly described on Exhibit D attached hereto and by this referenced incorporated herein.
- B. Owner A continues to own said land to be used as a vehicle access and for public utilities, reserving the right to use the subject land in all ways, including the granting of an access easement to adjoining tax lots and the further subdividing of Lot 19 of Holly Heights Subdivision, which do not unreasonably interfere with Owner B's right of vehicular access and public utilities needed to construct and maintain their services.
- C. This vehicular access easement is appurtenant to real property owned by Owner B.
- D. This easement shall be perpetual.
- E. Owner B, including future lot owners of Holly Heights Subdivision, except for the owner(s) of Lot 20, which does not have access to the private street, covenants and agrees to pay to Owner A a prorated share of the cost of maintenance, repair and replacement of the improved roadway per Tillamook County Road Standards and a prorated share of ad valorem taxes,

lighting costs, liability insurance, and any other costs associated with the private street so long as such roadway provides the primary access to Owner B's property from the state highway. Owner A agrees to maintain, repair and replace the private street per Tillamook County Road Standards. Owner B, including future subdivision lot owners agrees to reimburse Owner A for said maintenance, repair and replacement.

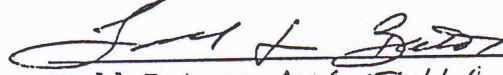
- (1) Owner B's share of the reasonable cost of the road maintenance shall be based on the actual costs of yearly maintenance divided by the total number of parcels or dwelling units for which the road provides access. Owner A shall provide written notice of the costs within thirty (30) days of completion of the maintenance and/or repair.
- (2) Owner B's (including future lot owners of Holly Heights Subdivision and excepting the owner(s) of Lot 20) share of the replacement cost of the private street shall be based on the replacement cost of the road divided over the life of the road. Said replacements costs shall be borne equally by the total number of parcels or dwelling units for which the road provides access, subject to the Holly Heights Declaration, Covenants and Restrictions and Homeowners Association Bylaws hereinafter recorded.
 - (a) In the event that Owner A grants future access easements to adjoining tax lots or subdivides Lot 19, maintenance and replacement costs shall be borne equally by the total number of parcels or dwelling units for which the road provides access.
 - (b) Owner A, in his sole discretion and at his option, may assign the maintenance responsibility and duties to the Homeowners Association. ✓

- 3) Owner B's (including future lot owners of Holly Heights Subdivision) failure to pay the prorated share of any costs within 90 days may become a lien against the delinquent property.
 - 4) Owner A shall make said repairs and/or replacement to comply with Tillamook County's Road Standards or upon written notice by Owner B, including the future lot owners of Holly Heights Subdivision, of the need for said repair or replacement.
- F. Owner B, including future lot owners of Holly Heights Subdivision, will indemnify and hold harmless Owner A and his/her/their heirs successors and/or assigns from claims or injury to persons or property as a result of negligence of Owner B, including future lot owners of Holly Heights Subdivision or their agents, or employees in the use of the easement. Owner B, including future lot owners of Holly Heights Subdivision, shall maintain a liability insurance policy, naming Owner A as a named insured, subject to Holly Heights Subdivision Covenants and Restrictions and Homeowners Association Bylaws hereinafter recorded.
- G. Owner B, including future lot owners of Holly Heights Subdivision, will indemnify and hold harmless Owner A and his/her/their heirs successors and/or assigns from claims or injury to persons or property as a result of any negligence in the maintenance and/or repairs to the road easement by Owner A, his agents, employees or assigns, or the omission thereof.
- H. If Owner B, including future lot owners of Holly Heights Subdivision, fails to abide by the terms of this easement instrument, a civil action for money damages or specific performance or contribution may be brought as set forth in ORS 105.180.

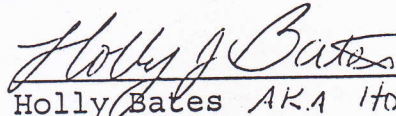
- I. This road and public utility easement and maintenance agreement shall inure to the benefit of and shall be binding on not only the parties hereto but also upon the heirs, successors, representatives and assigns of the parties, including future lot owners of Holly Heights Subdivision except for the owner(s) of Lot 20, and the future subdivision of Lot 19.
- J. If suit or legal action is instituted in connection with any controversy arising out of this road easement and maintenance agreement, the prevailing party shall be entitled to recover, in addition to the cost, such additional sums as the court may adjudge reasonable such as attorney fees, and if an appeal is taken from any judgment or decree of the trial court, such sum as the court may adjudge reasonable such as attorney fees may also be collected.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 22 day of September, 1997.



Todd Bates AKA Todd G. Bates



Holly Bates AKA Holly J. Bates

STATE OF OREGON)
County of Oregon)

BE IT REMEMBERED that on this 22 day of September, 1997 before me, the undersigned, a notary public in and for said

county and state, personally appeared the within named Todd Bates^{*} and Holly Bates,^{**} known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that same was executed freely and voluntarily.

** aka Todd G. Bates. ** aka Holly J. Bates*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Connie E. Linn

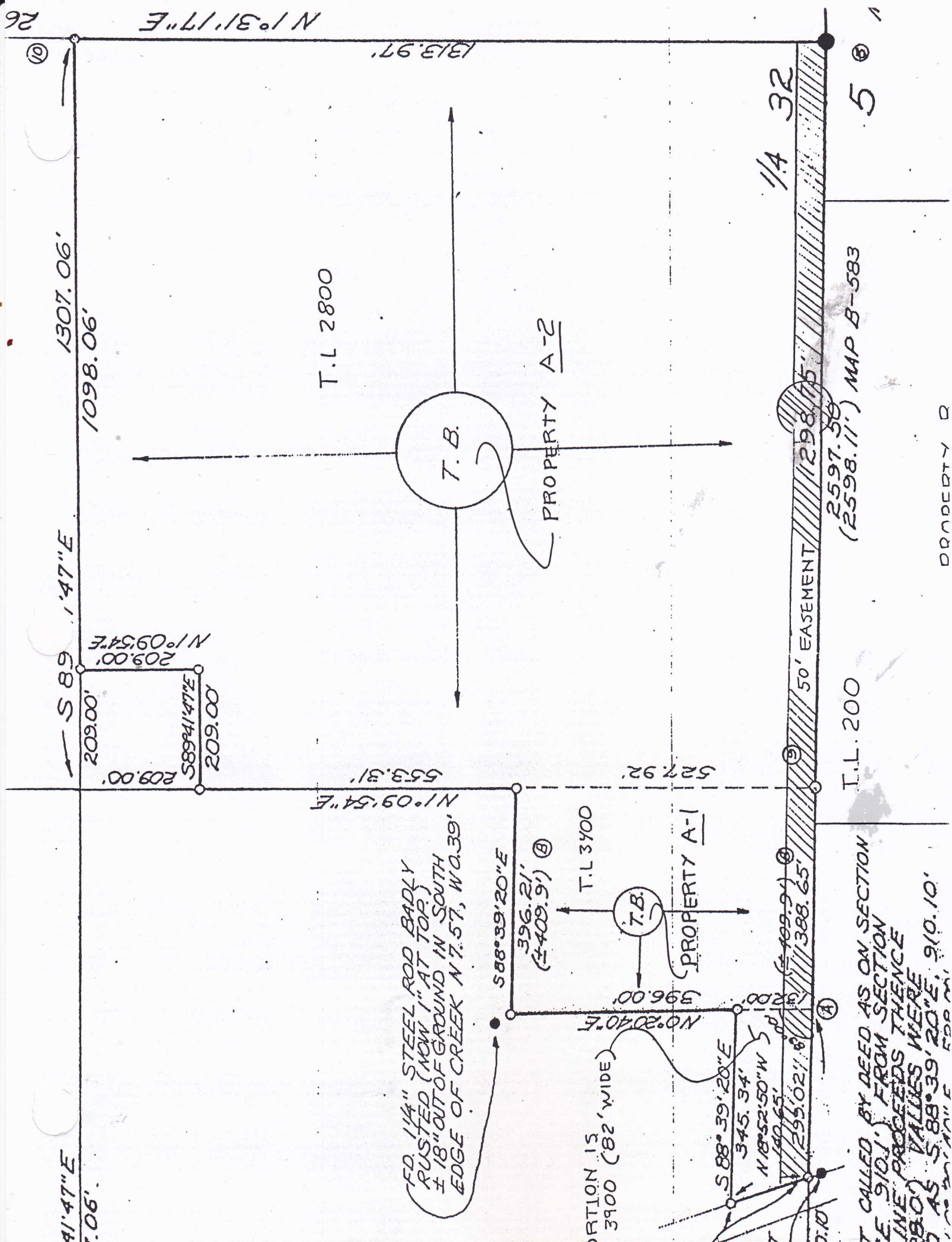
Notary Public of Oregon



My Commission expires: 11-11-97

Dated this 22 day of September, 1997.

C:\LAW\CLIENT\BATES\PRIVROAD.AGT



N 1° 31' 17" E
1307.06'

S 89° 1' 47" E
1098.06'

209.00' N 1° 09' 54" E
209.00' S 89° 41' 47" E
209.00'

N 1° 09' 54" E
553.31'

T.L. 2800

FD. 1/4" STEEL ROD BADLY RUSTED (NOW 1" AT TOP) ± 18" OUT OF GROUND IN SOUTH EDGE OF CREEK N 7.57, W 0.39'

S 88° 39' 20" E
396.21' (± 409.9')

PORTION IS 3900 (82' WIDE)

N 0° 20' 40" E
596.00'

T.L. 3700

PROPERTY A-1

S 88° 39' 20" E
345.34'
N 18° 52' 50" W
140.65'

S 169.94' 388.65'

50' EASEMENT
1298.75'

T.L. 200
2597.38
(2598.11') MAP B-583

NOT CALLED BY DEED AS ON SECTION 101. FROM SECTION LINE PROCEEDS THERE (89.0') VALUES WERE AS S 88° 39' 20" E, 910.10'

5

PROPERTY D

°HOLLY HEIGHTS EASEMENT DESCRIPTION

BEGINNING AT THE WEST ONE-SIXTEENTH CORNER BETWEEN SECTION 32, TOWNSHIP 1 SOUTH, RANGE 10 WEST AND SECTION 5, TOWNSHIP 2 SOUTH, RANGE 10 WEST, OF THE WILLAMETTE MERIDIAN SAID POINT BEING A TWO INCH IRON PIPE WITH BRASS CAP AS RECORDED IN TILLAMOOK COUNTY SURVEYOR RECORD MAP B-786; THENCE NORTH 89°52'06" WEST, 688.02 FEET TO A 5/8" IRON ROD WHICH IS ON THE EASTERN EDGE OF STATE HIGHWAY 131 RIGHT OF WAY; THENCE NORTH 20°07'33" WEST ALONG THE EASTERN BOUNDARY OF STATE HIGHWAY 131 RIGHT OF WAY A DISTANCE OF 53.30 FEET TO A 5/8" IRON ROD; THENCE SOUTH 89°52'06" EAST, 706.49 FEET TO A 5/8" IRON ROD; THENCE SOUTH 89°51'28" EAST, 934.80 FEET TO A 5/8" IRON ROD; THENCE ALONG A CURVE TO THE RIGHT WHOSE RADIUS IS 50 FEET TO A 5/8" IRON ROD WHICH IS SOUTH 89°51'28" EAST, 100.00 FEET FROM THE PREVIOUS MONUMENT; THENCE SOUTH 0°08'32" WEST, 50.00 FEET TO A 5/8" IRON ROD; THENCE NORTH 89°51'28" WEST, 75.00 FEET TO A 5/8" IRON ROD WHICH IS THE NORTH EAST CORNER OF THE HOLLY HEIGHTS SUBDIVISION; THENCE NORTH 89°51'28" WEST, 959.75 FEET TO THE POINT OF BEGINNING. ALL BEING IN THE SOUTH WEST ONE-QUARTER OF SECTION 32 AND IN TILLAMOOK COUNTY, OREGON.

97362734

I hereby certify that the within instrument was received for record and recorded in the County of Tillamook, State of Oregon.

SEPT. 22 3 27 PM '97

BOOK 390 PAGE 104

Witness my hand and legal affixed.

JOSEPHINE WELCH COUNTY CLERK



DEPUTY
55.00
20.00
1.00
9.00
20.00

EASAG
A&T
ADMIN
PLCP
NS